IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. SENTINEL MANAGEMENT GROUP, INC., ERIC A. BLOOM, and CHARLES K. MOSLEY, Defendants.	)	Case No. 08 C 2410 Hon. Charles P. Kocoras

ERIC BLOOM'S APPLICATION FOR ATTORNEYS' FEES AND COSTS
UNDER TO THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412

Defendant ERIC A. BLOOM ("Bloom"), by and through his attorneys, COTSIRILOS, TIGHE, STREICKER, POULOS & CAMPBELL, LTD., respectfully submits this Application for Attorneys' Fees and Costs Under the Equal Access to Justice Act, 28 U.S.C. § 2412. In support thereof, Bloom states as follows.

INTRODUCTION

On April 28, 2008, the Commodity Futures Trading Commission ("CFTC") filed a complaint alleging that Sentinel Management Group, Inc. ("Sentinel"), its former President and CEO, Eric Bloom, and its Senior Vice President and Head Trader, Charles Mosley ("Mosley"), violated various sections of the Commodities Exchange Act ("CEA") and related regulations. (Dckt. #1).[1] On March 30, 2012, after the completion of extensive fact and expert discovery and the briefing of cross-motions for summary judgment, this Court issued a Memorandum Opinion denying the CFTC's motion for

[1] References to the docket for this matter are cited as (Dckt. #__).
[2] A "prevailing party" is one who "has been awarded some relief by a court." *Buckhannon*

summary judgment and granting summary judgment in favor of Bloom on all counts. (Dckt. #159 - #160, hereafter "Opinion").

There can be no doubt that the CFTC steadfastly pursued its enforcement action against Bloom without some of the most basic requisite factual support (*e.g.*, a futures transaction) and under legal theories that are both unsupported and unjustified given the facts as it knew them. Thus, the Court concluded that the CFTC's theories against Bloom were nothing more than an attempt to "expand the scope of the CEA beyond its plain language" in circumstances "too far removed" from futures contracts for liability to attach under the CEA. (Opinion at 13, 14).

Based on the Court's ruling, it is clear that the CFTC's position in this matter had no legitimate basis in fact or law. In other words, the CFTC's action against Bloom was not "substantially justified" within the meaning of the Equal Access to Justice Act ("EAJA"), and as the as a prevailing party, Bloom is now entitled to the recoupment of costs and attorneys' fees under the EAJA. 28 U.S.C. § 2412.

ARGUMENT

I. Bloom Is Entitled to Attorneys' Fees and Costs Under the EAJA.

The EAJA provides that a successful litigant against the federal government is entitled to recover his attorneys' fees and costs if: (a) he is a "prevailing party"; (b) he meets the applicable size or net worth criteria; (c) the government's position was not "substantially justified"; (d) there are no special circumstances that would make an award unjust; and (e) he filed a timely application with the district court. 28 U.S.C. § 2412(d)(1)(A) and (B); *Krecioch v. United States,* 316 F.3d 684, 688 (7th Cir.2003). There can be no dispute that Bloom is a "prevailing party," that he meets the net worth criteria and that no special circumstances exist that would make an award of fees and costs unjust.[2] There also can be no dispute that this application meets the 30-day filing requirement of the EAJA. The only issue potentially requiring discussion is whether the CFTC's position was substantial justified. For the reasons set forth below, it was not.

A. The CFTC's Position Was Not "Substantially Justified."

At this stage, the burden of proof rests entirely on the government to demonstrate its position was "substantially justified." *Floroiu v. Gonzales,* 498 F.3d 746, 748 (7th Cir. 2007); *Golembiewski v. Barnhart,* 382 F.3d 721, 724 (7th Cir. 2004). In order to establish that its position in this case was substantially justified, the CFTC must prove that "(1) it had a reasonable basis in truth for the facts alleged; (2) it had a reasonable basis in law for the theory propounded; and (3) there was a reasonable connection between the facts alleged and the theory propounded." *Tchemkou v. Mukasey*, 517 F.3d 506, 509 (7th Cir.2008) (citation omitted). As explained more fully below, the CFTC cannot meet any of these criteria, much less all of them. Indeed, the Court's Opinion granting Bloom's motion for summary judgment on all on Counts makes clear that the CFTC had neither facts nor law to support its position. Accordingly, an award of fees and costs to Bloom is warranted.

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[2] A "prevailing party" is one who "has been awarded some relief by a court." *Buckhannon Board of Care & Home Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 603 (2001). Bloom plainly qualifies as a prevailing party under the EAJA, having won summary judgment on each and every count in the CFTC's lawsuit. Under Section 2412(d)(2)(B), an individual litigant is eligible for an award under the EAJA if his or her net worth does not exceed $2,000,000 at the time the action was filed. At the time of filing, April 28, 2008, Eric A. Bloom's net worth did not exceed $2,000,000.

1. The CFTC's Position Had No Basis In Fact.

In short, the CFTC had to establish three things to prove its claims against Bloom: (1) that Sentinel (and Bloom) engaged in conduct in connection with futures trading; (2) that Sentinel held "customer funds" as defined under the CEA – *i.e.*, "money, securities, and property received by [an FCM] to margin, guarantee, or secure futures contracts" (17 C.F.R. § 1.3(gg)(1)); and (3) that Bloom, in bad faith, willfully filed false 1-FRs with the CFTC. The CFTC knew, or certainly should have known, well in advance of filing suit that it could not prove a single one of these requisites.

The CFTC knew and understood since 1981 that two necessary conditions for liability under the CEA and its jurisdiction did not exist, and never had: (1) a fraud "in connection with" futures transactions; and (2) Sentinel's receipt of "customer funds" within the meaning of the CEA. (Opinion at 12). In fact, the CFTC itself mandated that Sentinel not engage in any futures trading, and Sentinel's promise not to trade futures was a precondition to its very existence – a condition by which Sentinel steadfastly abided. There was absolutely no dispute that between May 7, 1981, when the CFTC issued its No-Action Letter to Sentinel, and Sentinel's bankruptcy in August, 2007, Sentinel never engaged in any futures transactions nor did it ever accept any "customer funds" under the CEA. Not once.

Moreover, the CFTC, which audited Sentinel at least annually through its auditing arm, the National Futures Association ("NFA"), and annually received audited financial statements from Sentinel, was well familiar with Sentinel's operations and understood that these seminal facts had been constant throughout the more than a quarter century existence of Sentinel. In fact, when the CFTC filed this case against Bloom, it readily conceded that Sentinel conducted no futures trading. Specifically, the press release the CFTC issued three days after it sued Sentinel and Bloom, noted that "[u]nlike a typical FCM, Sentinel did not trade futures contracts on behalf of any customers." (CFTC Release 5494-08, dated May 1, 2008).

Despite its knowledge of these essential facts, the CFTC attempted to manufacture an untenable theory of liability that still required it to prove that Sentinel accepted "customer funds" (as defined under the CEA) and did so "in connection with" futures trading. The Court quite properly rejected those theories. In granting summary judgment on Counts I and II, the Court found that the CFTC's claims failed because Sentinel never engaged in futures trading, as required for violations under Section 13(b) of the CEA, 7 U.S.C. § 13c(b). The Court also found that Sentinel did not accept "customer funds," precluding liability under Section 4d of the CEA or the corresponding regulations. (Opinion at 17). As the Court found:

> [I]t is undisputed that Sentinel did not engage in futures trading and did not accept funds to margin, guarantee, or secure any futures trades. As Sentinel was not engaging in any futures trading, it was not an FCM as defined by the CEA.

(Opinion at 14-15). Indeed, this Court found that "[u]ltimately the CFTC seeks to expand the scope of the CEA beyond its plain language" and that "the CFTC lacks authority to extend the purview of a statute beyond what was intended by Congress." (Opinion at 14).

Further, in Count III, attempting to establish liability under 17 C.F.R. § 1.20, 1.22, and 1.23, the evidence proffered by the CFTC only further established that there was no legitimate factual basis for these claims. As the Court noted, the ***CFTC's own expert witness*** testified that Sentinel never received any "customer funds" – a factual prerequisite for liability under the relevant statutes and regulations. (Opinion at 17). In granting summary judgment on Count III, the Court again noted that the CFTC's line of argumentation "ignores" the undisputed fact that FCMs did not deposit funds with Sentinel to margin, guarantee, or secure any futures contracts. (Opinion at 18).

Moreover, as to Counts IV and V, the CFTC again chose to pursue the litigation despite clear, undisputed factual evidence indicating that these charges were unjustified. Through the NFA's audits of Sentinel, the CFTC knew that Sentinel accounted for and reported the BONY loan and securities sold under repurchase agreements in its "customer funds calculation." (Opinion at 19). In granting summary judgment on Counts IV and V, the Court noted that two NFA auditors testified that Sentinel's accounting for its loans and repos was accurate and that they never told Sentinel otherwise. Sentinel's outside auditors, McGladrey & Pullen, LLP, who also fully vetted Sentinel's Form 1-FRs, likewise expressed no concern about the accuracy of those 1-FRs. (Opinion at 19-20).

Finally, the Court concluded that "[i]n light of the substantial evidence presented by Bloom, there is no genuine dispute that Sentinel did not file false Form 1-FRs. Moreover, even if the statements were incorrect, the CFTC cannot show that Bloom acted knowingly, recklessly, or in bad faith because neither the NFA auditors nor Sentinel's independent auditors ever expressed concern about the statements." (Opinion at 20).

For these reasons, the Court's Opinion leaves no doubt that the CFTC's claims lacked any justification in fact, much less a substantial one. *Stein v. Sullivan*, 966 F.2d 317, 320 (7th Cir. 1992) (quoting *Pierce*, 487 U.S. at 565) ("'Substantially justified' … has been said to be satisfied if there is a 'genuine dispute,' or if reasonable people could differ as to the appropriateness of the contested action."). On this basis alone, the Court should grant Bloom's request for fees and costs.

2. The CFTC's Position Had No Basis in Law.

The CFTC similarly did not have a reasonable basis in law for the theories it propounded. As noted repeatedly in this Court's Order, the CFTC plainly misconstrued the plain language of basic provisions of the CEA – *the* statute the CFTC is charged with enforcing. In order to establish liability under Count I, the CFTC attempted to contort the CEA to stand for the proposition that an entity that neither trades futures nor holds "customer funds" is nonetheless subject to liability under the CEA simply because it is registered as an FCM. However, as the Court noted, "the CEA does not provide a general proscription of fraud by FCMs. Rather, it prohibits fraud in connection with the purchase or sale of futures commodities." (Opinion at 12). The CFTC's interpretation directly conflicted with both the CEA itself, and the case law interpreting the "in connection with" requirement and the scope of the CEA. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.* 552 U.S. 148, 161 (2008) (holding that fraudulent acts which merely involve commodities in some attenuated way do not satisfy the "in connection with" requirement of the CEA).

Further, this case did not involve a novel or rarely utilized section of the CEA, but rather the most basic thresholds for liability under the CEA – conduct in connection with futures transaction; acceptance of "customer funds"; and an entity that actually functions as an FCM as defined under the CEA. None of these assertions was true in fact. The CFTC knew that Sentinel was not functioning as an FCM, but nonetheless pursued a theory inconsistent with established case law. *N.Y. Currency Research Corp. v. CFTC,* 180 F.3d 83 (2d. Cir. 1999) (requiring that an entity not only register as a commodity trading advisor or commodity pool operator, but also function as one in order to be subject to the CEA). Perhaps more significantly, the CFTC's proffered application of the law was not only unjustified under the case law, but also in direct opposition to the plain language of the statute. As the Court noted, "the language of Section 4d(a) makes clear that the provision only applies to entities ***functioning*** as FCMs." (Opinion at 15). See 7 U.S.C. § 6d(a) (Section 4d applies solely to any person ***acting "as futures commission merchant"*** and imposes a segregation requirement regarding "customer funds" solely on such persons); see also, 7 U.S.C. § 1a(20) (defining "FCM" under the CEA).

When an agency fails to properly interpret a well-established or clear provision of the law, an award of EAJA fees is appropriate. *See Stewart v. Astrue*, 561 F.3d 679, 684 (7th Cir. 2009) (awarding EAJA attorney's fees "because the ALJ contravened longstanding agency regulations, as well as judicial precedent"); *Golembiewski,* 382 F.3d at 724 (awarding EAJA attorney's fees because "the ALJ and Commissioner violated clear and long judicial precedent and violated the Commissioner's own Ruling and Regulations"). The CFTC's position was the result of either a significant misunderstanding of, or disregard for, this established meaning of the law. In either case, an award of EAJA fees is appropriate.

3. There Was No Reasonable Connection Between the Facts Alleged and the Theories Propounded.

As to each Count, the Court found (1) CFTC failed to present facts that established liability under its theory of the law and (2) CFTC either ignored relevant facts or attempted to establish a connection between the law and the underlying facts that simply did not exist. For example, in Count I the CFTC alleged that Sentinel committed a fraud under the CEA, but the Court held "[t]he CEA does not provide a general proscription of fraud by FCMs. Rather, it prohibits fraud in connection with the purchase or sale of futures commodities." (Opinion at 12). It was undisputed that Sentinel never traded a futures contract, and the Court held that with respect to all the alleged conduct, "[t]he connection to futures contracts is too far removed for liability to attach under Section 4b of the Act." (Opinion at 13). In short, the undisputed facts offered no support for the CFTC's claims.

In Count II, the CFTC alleged that Sentinel, as an FCM, failed to properly segregate customer funds in violation of the CEA and applicable regulations. The Court found that the "CFTC's claims [could not] succeed as a matter of law" because (1) Sentinel did not solicit or accept orders for futures and therefore did not meet the statutory and regulatory definition of an FCM and (2) Sentinel never received "customer funds" under the Act or regulations. (Opinion at 16-17). Here again, the facts did not match up with the CFTC's legal theory, and the Court held its claims failed as a matter of law.

In Count III, the CFTC alleged that Sentinel violated Section 4d(b) of the CEA by pledging its investors' securities as collateral for the BONY loan, thereby improperly commingling or misappropriating "customer funds." The Court held that "[t]his argument ignores the undisputed fact that the FCMs did not deposit funds with Sentinel to margin, guarantee, or secure any futures contracts" and "Sentinel did not … receive any customer funds as required by Section 4d(b). (Opinion at 18).

In Counts IV and V, the CFTC alleged that Bloom willfully filed false 1-FRs with the CFTC. The Court found that "[i]n light of the substantial evidence presented by Bloom, there is no genuine dispute that Sentinel did not file false Form 1-FRs. Moreover, even if the statements were incorrect, the CFTC cannot show that Bloom acted knowingly, recklessly, or in bad faith because neither the NFA auditors nor Sentinel's independent auditors ever expressed concern about the statements." (Opinion at 20).

4. The CFTC's Pre-Litigation Conduct With and Oversight of Sentinel Further Supports An Award of Fees and Costs under the EAJA.

Finally, in making a determination of substantial justification, it is appropriate for the district court to examine the government's "litigation position as well as its prelitigation conduct – the action or inaction that gave rise to the litigation." *See Marcus*, 17 F.3d at 1036. Thus, "[t]he 'position of the United States' includes the underlying agency conduct as well as the agency's litigation position." *Id.*

The CFTC's underlying conduct and pre-litigation position is also relevant in this case. First, the CFTC's constant and continual regulatory oversight of, and acquiescence in, the manner and means of Sentinel's operations, coupled with the CFTC's knowledge of its business practices for over 25 years, further establishes that the claims it brought lacked any "substantial justification." Given the CFTC's continual and contemporaneous knowledge of Sentinel's business practices, if the CFTC had any factual or legal basis for claims against Sentinel for violations of the CEA, it would have brought those matters to the fore long ago. Second, the duration and extent of the CFTC's involvement with and knowledge of Sentinel's business practices – because Sentinel openly disclosed those things to the CFTC and its auditing arm, the NFA – debunks any theory that Sentinel, much less Bloom, acted in bad faith in any way, much less in willfully filing false reports with the CFTC.

B. Conclusion

The Court's Order and language both weigh heavily in favor of an award of fees. *Golembiewski,* 382 F.3d at 724 ("[s]trong language against the government's position in an opinion assessing the merits of a key issue is evidence in support of an award of EAJA fees," as is wholesale rejection of the government's arguments by the merits panel, *see id.* at 725 (awarding fees when none of the government's positions were affirmed or adopted). As the Court concluded, neither the facts nor the law supported the CFTC's action against Bloom and the Court properly did not countenance the CFTC's unjustified attempt to "expand the scope of the CEA beyond its plain language" in circumstances "too far removed" for liability to attach under the CEA. As such, there can be no doubt that the CFTC's position in this case was not "substantially justified."

On April 28, 2012, the CFTC filed a motion asking the Court to reconsider its decision as to Counts I and III, claiming the Court made a "manifest error of law" (CFTC Memo. at 2) with respect to the Court's conclusion that the alleged conduct did not involve "customer funds" or transactions "in connection with" futures contracts as required by the CEA. As an initial matter, the CFTC's motion is inappropriate under Fed.R.Civ.P. 59(e) because it merely seeks to relitigate those questions. The CFTC points to no controlling change in the law or in the facts. *BP Amoco Chem. V. Flint Hill Res., LLC.*, 498 F.Supp.2d 853, 856 (N.D. Ill. 2007)(discussing appropriate bases for motion for reconsideration). It also does not explain how the Court purportedly misapprehended the issues or the CFTC's position. *Id*. Finally, there is no claim that the

Court decided an issue outside the adversarial issues presented. *Id*. As such, the Court should summarily reject the CFTC's motion for reconsideration and, instead, order the CFTC to pay the reasonable fees and expenses incurred by Bloom in defending against its unjustified enforcement action.

II. The Amount of the Requested Fees and Costs Is Reasonable.

The EAJA requires a court to award "reasonable attorney fees" to a prevailing party when the government's position was not substantially justified. 28 U.S.C. § 2412(d)(1)(A). The EAJA further provides that "attorney fees shall not be awarded in excess of $125 per hour ***unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee***." 28 U.S.C. § 2412(d)(2)(A)(ii) (emphasis added).

Attached as Exhibit A are two spreadsheets which show the hourly rate and number of hours billed by each of Bloom's attorneys. (Ex. A). We have removed from our petition the hours billed to Bloom which were for tasks unrelated to the CFTC case (*i.e.*, SEC-exclusive tasks, grand jury investigation time, etc.). Further, in an effort to be fair, we have only asked for 50% of the total time spent on tasks which related to both the CFTC and SEC cases, allowing for half that time to be attributed to the SEC case.[3] (Ex. A). In total, Bloom is requesting an award of $476,406.09 in attorneys fees and fees of law clerks and paralegals, and $26,692.80 in expert witness fees. *Id.*; see also, *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 576-77 (2008) (fees for attorneys, paralegals,

[3] We note that a fair argument could be made that Bloom is entitled to the full amount of the fees for tasks related to the CFTC – rather than just the 50% we hereby request – as the CFTC should not benefit from the mere happenstance that the SEC also pursued a case against Bloom which had its discovery consolidated.

and experts are all permitted under the plain language of the EAJA), quoting 5 U.S.C. 504(b)(1)(A), and noting (at p. 577, fn. 3) that identical provisions apply to 28 U.S.C. §2412(d)(2)(A).

Here, both the number of hours for which Bloom seeks reimbursement and the rates that Bloom's counsel charged are fair and reasonable, and the Court should therefore award Bloom the full requested amount. As the Court knows, this case centered around a unique entity, Sentinel, operating in a complex financial and regulatory environment at a time of unprecedented turmoil in the credit and financial markets. The factual and legal complexity of the case required extensive research, preparation, and expertise, all warranting an award of fees and costs in Bloom's favor.

1. The Hours Worked on the Case Are Reasonable.

Mastery of the facts in this case required extensive discovery spanning over two years from 28 witnesses, including three experts, and multiple public accountants and National Futures Association ("NFA") auditors. Counsel was responsible for wading through a massive amount of discovery materials, including 544,418 documents produced by the Bank of New York, hundreds of thousands of documents from Sentinel, and numerous financial and regulatory audit papers produced by Sentinel's outside auditors, McGladrey & Pullen, LLP and the NFA, respectively.

2. The Rates Requested Are Reasonable.

Bloom requests fees be awarded in the total amount of $476,406.09, and that expert fees be awarded in the amount of $26,692.80. Counsel who worked on this matter charged between $200 and $375 per hour – rates that are below market for the type and quality of services provided in this complex case. The hourly rates for law clerks and paralegals ranged from $75.00 to $125, which also are extremely reasonable, if not below-market.

As noted above, the EAJA sets a default hourly rate of $125 "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). The "special factor" exception has been interpreted as referring to "attorneys having some distinctive knowledge or specialized skill needful for the litigation in question." *Pierce v. Underwood*, 487 U.S. 552, 572 (1988). The Seventh Circuit has adopted the position articulated by the First Circuit in *Atlantic Fish Spotters Ass'n v. Daley,* 205 F.3d 488, 492 (1st Cir. 2000), that "the statute does not assign extra compensation by "fields" but by asking the practical question whether in the case at hand lawyers qualified to handle the case can be found for $125 [per hour] or less….[I]f a plaintiff can show that a particular…kind of case…requires for competent counsel someone from among a small class of specialists who are available only for [more than $125] per hour, that seems enough to meet the language of the statute…." *Mathews-Sheets v. Astrue*, 658 F.3d 560 (7th Cir. 2011).

The "special factor" exception applies in this case. There are not lawyers available in the marketplace with the necessary expertise to handle this matter for $125 per hour. The CFTC's allegations in this matter involved complex issues of fact and law. Moreover, as the Court knows, the civil claims of the CFTC in this matter (and the SEC in its companion case) were brought under the shadow of a criminal grand jury investigation. Thus, Bloom required counsel with both civil and criminal defense expertise, particularly in the areas of alleged commodities futures and securities trading fraud – a distinctive expertise that undersigned counsel has and a specialty in which undersigned counsel and his firm have practiced for many years. The rates charged in this matter are fair and reasonable and, particularly considering the experience, expertise, and sophistication of counsel and the legal services provided, the rates are below market for this district.

Another objective measure relevant to determining a reasonable rate for counsel's services is the Laffey Matrix. (attached as Exhibit B). The Laffey Matrix is a chart of hourly rates for attorneys and paralegals in the Washington, D.C. area that was prepared by the United States Attorney's Office for the District of Columbia to be used in fee-shifting cases. Courts in this district have considered the Laffey Matrix for the purpose of determining reasonable rates in a variety of situations. *See Hadnott v. City of Chicago*, No. 07 C 6754, 2010 WL 1499473, at *6 (N.D. Ill. Apr. 12, 2010) (noting that "numerous judges in this district" have considered the Laffey Matrix as one factor in determining rates).

The rates reflected in the Laffey Matrix are considerably higher than those requested here by Bloom. For example, the Laffey Matrix places rates for a lawyer with more than 20 years of experience, like Theodore T. Poulos, from $645 per hour to $734 per hour from 2008 – 2012. (Ex. B). Mr. Poulos charged $375 per hour on this matter. Similarly, for a lawyer of Terence H. Campbell's tenure, with between 11 and 19 years of experience, the Laffey Matrix provides rates between $536 per hour and $609 per hour. Mr. Campbell charged $300 per hour on this matter. The matrix, therefore, further supports the assertions of counsel that the rates requested in this matter are not only reasonable, but considerably below market for this type of work by firms in both the

Chicago market and other large urban markets. An award of fees in the full amount requested is both entirely reasonable and fully justified by the facts and circumstances of this case.

E. There Are No Special Circumstances That Would Make An Award Unjust, and This Application for Fees and Costs Is Timely.

The Court rendered final judgment in this matter by granting Bloom's motion for summary judgment on all counts on March 30, 2012. The EAJA, Local Rule 54.1, and Local Rule 54.3 are inconsistent regarding the time for filing an application for fees and costs. The EAJA requires that a prevailing party file an application for fees and costs within 30 days of final judgment, which in this case would be April 30, 2012. 28 U.S.C. § 2412(d)(1)(B). Similarly, Local Rule 54.1 requires a prevailing party to file a bill of costs "within 30 days of the entry of a judgment allowing costs."[4] (*Id.*) In contrast, Local Rule 54.3 provides the prevailing party 91 days after entry of judgment to file an application for fees. LR 54.3(b). Moreover, Local Rule 54.3 goes on to provide a 56-day timetable for exchange of information between the parties and 70 days for the parties to file a joint statement listing (1) the total amount of fees and expenses sought; (2) the amount of fees and expenses the respondent deems should be awarded; (3) a brief description of remaining disputes between the parties; and (4) a statement disclosing (a) whether the motion for fees and expenses will be based on a judgment of the underlying merits dispute or a settlement, and (b) if the motion will be based on a judgment, whether respondent has appealed or intends to appeal the judgment. LR 54.3(e).

Because Bloom cannot both satisfy the 30 day timeline provided in the EAJA and Local Rule 54.1, as well as the procedures set forth in Local Rule 54.3, Bloom requests

[4] Bloom is filing his separate Rule 54 Bill of Costs contemporaneously with this Fee Petition under the EAJA.

the Court's guidance on its preferred procedure and schedule for resolution of Bloom's Application for Attorneys' Fees and Costs. In that regard, Rule 54.3(g) specifically provides that the Court may "modify any time schedule provided for by this rule." (*Id.*). Nonetheless, in order to satisfy the timeline required by the EAJA, Bloom specifically hereby applies for attorneys' fees and costs under 28 U.S.C. § 2412, and submits his Rule 54 Bill of Costs relating to separate and additional costs, reserving the right to submit further materials in support thereof upon receipt of guidance from the Court.

CONCLUSION

WHEREFORE, Eric A. Bloom respectfully requests that the Court enter an Order (a) granting Bloom's Application for Attorneys' Fees and Costs in the total amount of $503,098.89 under the EAJA, plus $26,648.68 as detailed in his Bill of Costs under Rule 54, for a total of $529,747.57. Alternatively, if the Court believes additional information is required, we request the Court's guidance on the schedule and procedure the parties should follow in resolution of Bloom's Application for Attorneys' Fees and Costs Under 28 U.S.C. § 2412 and Local Rules 54.1 and 54.3.

Dated: April 30, 2012

Respectfully submitted

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